



MEDIATION HANDBOOK

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THE MEDIATION PROCESS

INITIATING THE MEDIATION PROCESS. For all disputes that arise outside of the EEO process, either party or both jointly, may submit a completed Request to Use Mediation (Attachment 1) to the Alternative Dispute Resolution (ADR) Coordinator (AMH-100) for mediator assignment. If the request for mediation is not a joint one, the ADR Coordinator will seek concurrence of the other party. The ADR Coordinator will acknowledge the request for mediation in writing (Attachment 2) within two business days. Upon agreement of both parties to participate in mediation, a mediator will be assigned from a list of collateral duty mediators maintained by the ADR Coordinator. Mediators will be listed in alphabetical order and mediation opportunities will be assigned on a rotational basis. Mediation program users may request an out-of-agency mediator be assigned by the ADR Coordinator through the Oklahoma City Federal Executive Board Shared Neutrals Program.

THE MEDIATION PROCESS. The assigned mediator will contact the parties within seven business days to make arrangements for the mediation session(s). Upon completion of the mediation session(s), the mediator will provide the ADR Coordinator either a signed Settlement Agreement (Attachment 5) or a statement that mediation was attempted but was unsuccessful. The ADR Coordinator will arrange to have mediated settlement agreements reviewed for legal sufficiency. Upon completion of the legal review, legally sufficient Settlement Agreements will be returned to the parties for implementation. Settlement Agreements found to be legally deficient will be returned to the parties for consideration of appropriate action. Such appropriate action may include additional mediation efforts or reinstatement of the original dispute.

THINGS YOU CAN EXPECT FROM MEDIATION

About your mediator....

The mediator is not an advocate for either party, nor is the mediator a decision maker. The mediator is a neutral person who helps communication between you and the other parties and who also helps each side get a clearer picture of the case. The mediator will not impose a solution if the parties cannot agree on one, nor judge who is at fault.

The mediator will work with both sides to develop mutually satisfactory choices for finding a solution to the dispute.

The mediator must keep all discussions confidential and cannot volunteer to be called as a witness in a court of law or other trial proceeding.

At the mediation meeting....

All parties will be asked to sign the Agreement to Participate in Mediation (Attachment 3).

There will be introductions, then the mediator will tell you how the mediation process works. The mediator will explain what will happen at the meeting, when it will happen and give any rules that must be followed during the meeting. Then, the mediator will answer any questions the parties may have.

Each party will be given the opportunity to speak and explain the issue, without interruption. The mediator will ask questions to help all parties understand the issues.

The mediator may then meet with each side separately to talk about the issues in more detail. At that time, the mediator may also find out how the parties would like the issue resolved. There may be additional separate meetings or the mediator may decide to continue meeting with the parties together. The mediator will continue to help the parties explore solutions.

Since all parties have voluntarily chosen this process, each will be expected to give accurate information, answer questions truthfully, be courteous, allow the party speaking to finish without interruption, use appropriate language, allow the mediator to interrupt the process any time he/she believes a break or separate meeting is needed to move the process along, and make a sincere effort toward a mutually agreeable solution.

At the end of the mediation meeting....

If the dispute is resolved at the meeting, a Settlement Agreement will be prepared and signed by all parties before leaving. At the same time, all parties will be given a “draft” copy of the Settlement Agreement, and the mediator will destroy any notes taken. The mediator will deliver the original Settlement Agreement to the ADR Coordinator for submission for a legal review. Details of the Settlement Agreement will be shared with only those who need to know and those whom the parties have identified as recipients. When the legal review is completed, the ADR Coordinator will return legally sufficient agreements to the parties for implementation in accordance with the terms of the agreement. Mediated Settlement Agreements found to be legally deficient will be returned to the parties for consideration of appropriate action.

Legal Settlement Agreements, when signed, bind all parties to the agreement.

If a settlement is not reached, no party will be held to anything said or done at the mediation meeting. Whatever is said or presented during the mediation meeting cannot be used in other actions which the parties may pursue.

MORE QUESTIONS AND ANSWERS ABOUT MEDIATION**Exactly what is mediation?**

Mediation is an alternative dispute resolution process which is non-adversarial in nature. It is a process which is used to assist the parties in reaching a mutually agreeable resolution. It can be used at any stage of a complaint, but early intervention seems to be the most effective.

How does it work?

Both parties sit down with an impartial, trained mediator who acts as a facilitator. The disputing parties discuss their differences and look for common ground upon which they can fashion a mutually agreeable resolution to their problem. In mediation, there are no winners or losers. No third party acts as judge or jury; the parties themselves work out the agreement. If the mediation is successful, a Settlement Agreement reflecting input from both parties is signed and becomes binding.

Who acts as the mediator?

At the Mike Monroney Aeronautical Center (MMAC), there are two groups of mediators available. One group of mediators works primarily within the EEO complaints system. The other group works primarily with disputes that arise outside the EEO complaints system. Both groups have received special training in consensual dispute resolution techniques and are well qualified to assist in resolving your dispute.

Who attends the mediation session?

Typically, the disputing parties, any representatives, and the mediator are present. If a bargaining unit employee is involved, the union may have an observer present. Occasionally, others may attend to provide technical or subject matter advice to the parties or the mediator. Normally, the fewer people involved in the mediation session the better. However, it is necessary that the disputing parties attend as they will personally determine the terms of any settlement that may be reached.

Who writes the agreement? Will it be hard to understand?

The terms of the agreement are dictated to the mediator by the parties. Wherever possible, the words of the parties are recorded exactly as they wish them to be stated. However, the terms must be clear and agreeable to both parties. Often, a standard form containing required legal information will be used, with the parties then adding their own terms to the agreement.

What happens to my complaint/grievance if I sign an agreement?

The agreement will contain a stipulation that you are withdrawing your complaint/grievance in exchange for the promises made in the agreement. The agreement will close your complaint/grievance, and processing will cease at that point.

Will a lot of pressure be put on me to sign the agreement even if I don't want to?

Absolutely not! Both parties must agree to the terms of the agreement and be willing to put them into effect. If either party has reservations, the agreement will not be accomplished.

How long will the mediation take?

It varies. Some sessions are completed very quickly. Occasionally mediation sessions continue over several days depending on the commitments of the parties. The ideal is for the mediation process to be completed in a single session.

REQUEST TO USE MEDIATION

Name:_____

Work place address (routing symbol):_____

Work phone:_____ Your hours of duty:_____

Name of the other party:_____

Work place address of the other party (routing symbol):_____

Work phone of the other party:_____ Their hours of duty:_____

Brief description of the dispute:_____

I have___have not___contacted a Union official regarding this matter.

I have___have not___contacted an EEO counselor regarding this matter.

Address where you want the response to this request sent:_____

Signature:_____ Date:_____

Signature of the other party (not required):_____ Date:_____

YOUR REQUEST FOR MEDIATION
HAS BEEN RECEIVED

1. The Alternative Dispute Resolution (ADR) Coordinator received your request for mediation on _____.
2. This request starts the mediation process and does not stop the clock on *filing* grievances under negotiated grievance procedures, EEO informal complaints, or any other formal process. If a solution is not reached, your rights to pursue a grievance, EEO complaint, or any other avenue available to you will continue. It is your responsibility to know and meet all the requirements of the negotiated grievance procedure, the EEO complaint process, or any other process you select. If your request for mediation is made in connection with a grievance or other complaint currently in progress, it is your responsibility to know and meet the requirements of any agreements or directive(s) which place that grievance or complaint in abeyance pending the outcome of the mediation process.
3. Your mediation meeting will take place no later than seven business days after your mediator has contacted you.
4. At the mediation meeting you may have a representative, but you and the other party are the ones who will find a solution. If you are a bargaining unit employee, you may have a union representative, if you choose. If you are a bargaining unit employee, you should be aware the union has the option to have a representative present at the mediation meeting as an **OBSERVER ONLY** whether or not you choose to have a union representative.
5. You may stop the mediation process at any time.

AGREEMENT TO PARTICIPATE IN MEDIATION

This is an agreement by the participants to attempt to resolve certain issues that may be related to discrimination, harassment, interpersonal relationships between coworkers, negotiated grievances, or disputes between management and union. The participants agree to work diligently to find a solution to the dispute, to cooperate with the mediator, and to consider all suggestions made that may lead to a realistic solution to the problem.

Mediation is a process that does not find winners or losers. It works at finding a solution that is acceptable to both parties.

The mediator does not take sides, but is neutral. The mediator works to help the participants reach, for themselves, an acceptable solution to their problem. The mediator has been trained in getting people to communicate with each other and in managing conflict. The decision-making power, however, is with the participants involved, not the mediator. If the participants cannot agree on a solution, the mediator will not force a solution on the participants, nor will the mediator judge which participant, if any, is wrong.

The participants understand that the mediator has no authority to make decisions, or to act as a judge or an arbitrator. The mediator will not act as an advocate, attorney, or representative for any participant.

The participants understand and agree that mediation sessions are confidential settlement talks and that all offers, promises, conduct and statements, whether written or oral, made in the course of the process cannot be used in any formal process related to this dispute.

Mediation is confidential, and the participants agree not to make known any discussion(s) held during the mediation process, either during or following the mediation. Any documents given to the mediator or statements made during the mediation process are for settlement purposes only.

The participants agree not to subpoena or request the mediator to serve as a witness or request or use as evidence in any other proceeding any materials prepared by the mediator for the mediation with the exception of the Settlement Agreement signed by both of the participants. In no event will the mediator voluntarily testify on behalf of any party or submit any type of report in connection with this mediation.

No participant shall be bound by anything said or done at the mediation meeting unless an agreement is reached and the Settlement Agreement is signed by all necessary participants. If a settlement is reached, the agreement shall be put in writing by the mediator and signed by participants. Upon verification of legal sufficiency, the agreement shall be binding upon all parties to the settlement.

In the event mediation is stopped for any reason, the requester's rights to pursue an EEO complaint, negotiated grievance, or other legal action are not waived and will be protected under the mediation process. However, it is the requester's responsibility to comply with the requirements of EEO complaint, negotiated grievance procedure, or other legal action.

No admission of guilt, fault, or wrongdoing by either participant is implied, nor should any be inferred, by participation in the mediation process.

The participants agree to make a sincere effort to resolve the dispute, to allow the participant speaking to continue his/her statements to completion, to conduct themselves in a courteous and non-hostile manner, to use appropriate language, and to allow the mediator to interrupt the process at any time the mediator believes a caucus or break is needed to help the mediation process.

If either participant has questions regarding this process, he/she is free to contact the ADR Coordinator in AMH-100, extension 45577.

By their signatures below, the participants acknowledge they have read, understand and agree to the provisions of this agreement.

Participant

Date

Participant

Date

Mediator

Date

CONFIDENTIALITY STATEMENT

I understand and agree that mediation sessions are confidential settlement talks and that all offers, promises, conduct, and statements, whether written or oral, made in the course of the process cannot be used in any formal process related to this dispute.

I agree not to make known any discussion(s) held during the mediation process, either during or following the mediation. Any documents given to the mediator or statements made during the mediation process are for settlement purposes only.

Any notes prepared by the mediator or parties during the mediation process shall be destroyed at the end of the mediation session before leaving the mediation room.

Participant

Date

Participant

Date

Mediator

Date

SETTLEMENT AGREEMENT

MEDIATION CASE # _____

The parties, (*identified*), agree to the terms of this agreement in complete resolution of the issue(s) identified below. This settlement is entered into voluntarily, and in exchange for the items set forth below, the undersigned participants to this agreement resolve to settle any and all formal EEO complaints and negotiated grievances, as well as all other formal or informal recourses and litigation already in progress or that may be considered in the future related to the issue(s) identified as follows:

Issue #1 (*identified*):

(identify all additional issues as appropriate)

SECTION 1: (Participant) agrees to:

SECTION 2: (Participant) agrees to:

SECTION 3: The Mike Monroney Aeronautical Center agrees to:

SECTION 4: All participants also stipulate that:

1. Upon determination of legal sufficiency, this agreement is a binding and enforceable settlement contract, and neither participant can change his/her mind at a later date.
2. This agreement has been entered into freely by both participants. This agreement does not constitute an admission of guilt, error, fault, or wrongdoing by either participant. This agreement shall be kept confidential and the terms herein shall not be disclosed by either participant except to authorized officials or other officials responsible for implementing the agreement unless agreed to by mutual consent. This agreement shall not serve as a precedent for resolving any other complaint which has been or may be filed by the complainant or any other person other than those identified herein. This agreement constitutes the entire agreement and there are no other terms to this agreement except those specified herein.
3. The participants agree to use mediation again if disagreements about this agreement should arise later.

Participant

Date

Participant

Date

Mediator

Date

MEDIATION USER SURVEY

Your comments are important. Please rate each item:

1=Poor 2=Fair 3=Good 4=Excellent 5=Outstanding

- | | | | | | | |
|-----|---|---|---|---|---|---|
| 1. | How well did the mediator explain the process? | 1 | 2 | 3 | 4 | 5 |
| 2. | Were you able to fully tell your side? | 1 | 2 | 3 | 4 | 5 |
| 3. | How well did the mediator listen? | 1 | 2 | 3 | 4 | 5 |
| 4. | Were you treated equally with the other party? | 1 | 2 | 3 | 4 | 5 |
| 5. | Did the mediator understand the issues involved? | 1 | 2 | 3 | 4 | 5 |
| 6. | How well did the mediator clarify key issues and interests of each party? | 1 | 2 | 3 | 4 | 5 |
| 7. | How satisfied were you with the outcome of the mediation? | 1 | 2 | 3 | 4 | 5 |
| 8. | How satisfied were you with the process? | 1 | 2 | 3 | 4 | 5 |
| 9. | How satisfied were you with the mediator? | 1 | 2 | 3 | 4 | 5 |
| 10. | How can this process be improved? | | | | | |

MEDIATOR SELF EVALUATION

- | | | | |
|-----|---|-----|----|
| 1. | Did I put the parties at ease? | Yes | No |
| 2. | Did the parties understand the process? | Yes | No |
| 3. | Did I explain my role? | Yes | No |
| 4. | Did I advise the parties about confidentiality? | Yes | No |
| 5. | Did I let the parties explain their respective positions? | Yes | No |
| 6. | Did I handle my emotions and those of the parties constructively? | Yes | No |
| 7. | Did both parties appear to feel that I was neutral? | Yes | No |
| 8. | Did I determine the complainant's desired resolution? | Yes | No |
| 9. | Did I suggest settlement options? | Yes | No |
| 10. | Was I effective in dealing with the friction between the parties? | Yes | No |
| 11. | Was I effective in dealing with any imbalance in power between the parties? | Yes | No |
| 12. | Was there anything I did that may have detracted from the effectiveness of the settlement effort? | Yes | No |
| 13. | If yes, list. | | |

14. How can I improve?

15. Overall, I was: **Poor** **Not so good** **OK** **GREAT!**

MEDIATION CASE FLOW SHEET

Case Number: _____ **Date Received:** _____

Name: _____ Routing symbol: _____ Work phone: _____

Name: _____ Routing symbol: _____ Work phone: _____

Brief description: _____

Acknowledgment of request (two business days) Date: _____

Union notified (how and whom): _____ Date: _____

Assign mediator (two business days) Date: _____

Mediator's name: _____ Telephone: _____

Mediation scheduled (seven business days from request) Date of mediation: _____

Mediator progress report to ADR Coordinator
(seven business days from assignment) Date: _____

Settlement Agreement signed Date: _____

Settlement Agreement submitted for legal review Date: _____

Copy of Settlement Agreement given to all parties Date: _____

All notes destroyed Date: _____

Mediation User Survey sent to participants Date: _____

Mediation User Survey received from participants Date: _____ Date: _____

Mediator Self Evaluation sent to mediator Date: _____

Mediator Self Evaluation received from mediator Date: _____

Final disposition of case: (circle) **Settled** **Not Settled**

Cost of mediation (from worksheet) _____ **Length of mediation** _____

Estimated cost savings _____

MEDIATION COST WORKSHEET

Case # _____ Date of Mediation _____

Participant: Participant: Mediator:

Name _____ Name _____ Name _____

Grade/Salary _____ Grade/Salary _____ Grade/Salary _____

List others present (if Federal employees, include grade/salary information) _____

PREPARATION TIME (duty time hours only)

Participant: _____ Participant: _____ Mediator: _____

Duration of mediation session(s) (in hours) _____

Travel expenses of participants, if any _____

Miscellaneous expenses, if any _____

ADR Coordinator Cost Data

Pre-mediation arrangements (time in hours) _____ Cost _____

Post-mediation activities (time in hours) _____ Cost _____

Miscellaneous expenses, if any _____

TOTAL COST OF MEDIATION PROCESS _____

COST AVOIDANCE / SAVINGS DATA

Nature of complaint (forum) _____

Estimated cost of complaint (if pursued to conclusion) _____

Estimated cost savings from mediation _____